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No. 03-1569

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DONALD MARTIN, Individually,

Petitioner,

v.

DECOMA LOVE-LANE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

M. DANIEL MCGINN
(*Counsel of Record*)
NATALIE KAY SANDERS
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
(336) 373-8850

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

ARGUMENT IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Petitioner Defendant Martin presented to the Court the question of whether or not the majority of the Fourth Circuit panel disregarded the qualified immunity standards (rather than the summary judgment standards) set forth by this Court in *Saucier v. Katz* and *Anderson v. Creighton*. With respect to that question, Respondent Plaintiff Love-Lane only asserts one primary reason why review is not warranted. Specifically, Respondent asserts that the majority's analysis in disregard of *Saucier* and *Anderson* was appropriate because those cases involved Fourth Amendment rather than First Amendment claims. Brief in Opposition at 14.

Qualified immunity, however, is a defense potentially available to public officials in their individual capacity whenever a constitutional claim for monetary damages is brought against them. *See Anderson v. Creighton*, 483 U.S. 635, 638-39 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982); *Wood v. Strickland*, 420 U.S. 308, 321 (1975). Nothing in this Court's precedents suggests that the nature of the underlying constitutional claim alters the principles to be applied in analyzing a qualified immunity defense. *Cf. Crawford-El v. Britton*, 523 U.S. 574, 585 (1998) (explaining that proposed rule regarding qualified immunity would be applicable "to all classes of plaintiffs bringing damages actions against any government official" and to a "wide array of different federal law claims"). Accordingly, there is no basis upon which to conclude that the qualified immunity standards as refined by this Court in *Saucier* and *Anderson* would not apply to the First Amendment free speech claim in this case.

In *Saucier*, this Court instructed that an independent analysis "on a more specific level" must be performed with regard to qualified immunity. *Saucier*, 533 U.S. at 200. A

court cannot merely rely upon its analysis of the underlying elements of a plaintiff's claim. *Id.* at 199-202. In *Anderson*, this Court explained that an examination of the information possessed by the decision-making public official is appropriately a part of this particularized analysis. *Anderson*, 483 U.S. at 641. As Respondent Plaintiff Love-Lane points out, the majority properly articulated the general test of qualified immunity. Brief in Opposition at 15-16. However, as Respondent Plaintiff Love-Lane also admits, when applying that test, the majority made its determination "based on its prior analysis" of the elements of Plaintiff Love-Lane's claim. Brief in Opposition at 16. It did not independently consider the evidence in any more particularized way or by looking at the information possessed by Defendant Martin to determine if a reasonable superintendent in Defendant Martin's situation necessarily would have reached the same conclusion that the majority did regarding the elements of Plaintiff Love-Lane's claim. This missing analytical step places the majority's decision in conflict with this Court's decisions in *Saucier* and *Anderson*.

In her Brief in Opposition, Respondent Plaintiff Love-Lane tries to divert attention from this conflict by recasting the question presented as whether or not the majority of Fourth Circuit panel properly applied the summary judgment standards of Rule 56. Brief in Opposition at 9-12. The dissent did disagree with the majority on what reasonable inferences could be drawn in Plaintiff Love-Lane's favor under Rule 56's summary judgment standard, and this led the dissent to disagree with the majority even with regard to whether or not Plaintiff Love-Lane had established the underlying elements of her free speech claim. Pet. App. 49a-56a. With respect to qualified immunity, as explained above, the majority did not perform a key step in the analysis—it did not perform a particularized inquiry, looking at information known to Defendant Martin. Thus, when the dissent pointed out

undisputed evidence that was disregarded by the majority on such issues, the majority's refrain that it was just applying summary judgment standards missed the mark, and so does Respondent Plaintiff Love-Lane's recharacterization of the question presented in this case. The summary judgment standard and the qualified immunity standard operate simultaneously. One does not replace the other. Thus, Respondent Plaintiff Love-Lane's assertion—that this case does not merit review because the majority properly applied the summary judgment standard—is unpersuasive.

CONCLUSION

This Court has repeatedly emphasized the importance of early and complete consideration of qualified immunity. *Anderson*, 483 U.S. at 638; *Harlow*, 457 U.S. at 814. As pointed out by the amici in support of Petitioner Defendant Martin's Petition for Writ of Certiorari, the interests this Court has sought to serve by guarding qualified immunity in this manner are particularly important in the context of school administration as presented by this case. Brief of Amicus Curiae at 3-7. Given the importance of this matter and the conflict in analysis between the majority and this Court (as well as the conflicts with other circuit courts), this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

M. DANIEL MCGINN
(*Counsel of Record*)
NATALIE KAY SANDERS
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
(336) 373-8850

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